

**EXTRACARE'S TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS
AND/OR SERVICES**

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

Definitions:

"Authorised"	signed by an authorised representative of the Customer.
"Business Day"	a day other than a Saturday, Sunday, or public holiday in England, when banks in London are open for business.
"Business Hours"	the period from 9.00 am to 5.00 pm on any Business Day.
"Commencement Date"	has the meaning given in clause 2.2.
"Conditions"	these terms and conditions as amended from time to time in accordance with clause 20.12.
"Contract"	the contract between the Customer and the Supplier for the supply of Goods or Services or Goods and Services in accordance with these Conditions, which comprises the Purchase Order, these Conditions and documents referred to in them, and any agreed Order Amendments.
"Control"	has the meaning given in section 1124 of the Corporation Tax Act 2010.
"Customer"	The ExtraCare Charitable Trust, company number 02205136, whose registered office is at 7 Harry Weston Road, Binley Business Park, Binley, Coventry, CV3 2SN.

"Customer Materials"	has the meaning set out in clause 7.3.9.
"Deliverables"	all documents, products and materials developed by the Supplier or its agents, contractors, and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications, and reports (including drafts).
"Delivery Date"	the date specified in the Order, or, if none is specified, within a reasonable time of the date of the Order.
"Delivery Location"	the address for delivery of Goods as set out in the Order.
"Goods"	the goods (or any part of them) set out in the Order.
"Good Industry Practice"	the standards expected of a reputable person or firm in the Supplier's industry.
"Goods Specification"	any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.
"Intellectual Property Rights"	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim

priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Services" the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

"Service Specification" the description or specification for Services agreed in writing by the Customer and the Supplier.

"Supplier" the person or firm from whom the Customer purchases the Goods or Services or Goods and Services.

"VAT" value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax

Interpretation:

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a party includes its personal representatives, successors and permitted assigns.

A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

A reference to **writing** or **written** excludes fax but not email.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods or Services, or Goods and Services, from the Supplier in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

- 2.2.1 the Supplier issuing written acceptance of the Order; or
- 2.2.2 any act by the Supplier consistent with fulfilling the Order,
at which point and on which date the Contract shall come into existence
(**Commencement Date**).
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice, or course of dealing.
- 2.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.5 No addition, alteration or substitution of these Conditions shall be binding unless authorised.
- 2.6 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with, or contained in any documents of the Supplier that is inconsistent with these Conditions.
- 2.7 If a court of competent jurisdiction holds that this Contract should include any Supplier terms, then, to the extent there is a conflict, these Conditions shall prevail.

3. ORDER AMENDMENTS

- 3.1 The Customer may send the Supplier an Order Amendment at any time prior to delivery of the Goods or performance of the Services.
- 3.2 If the Order Amendment causes a change to the Price or any applicable delivery date, then the Supplier must get Authorisation from the Customer prior to shipment of Goods or performance of Services.

4. GENERAL SUPPLIER OBLIGATIONS

- 4.1 Where applicable, the Supplier shall comply fully with the Specification and Tender Response Document. This includes, without limitation, any key performance indicators, obligations in relation to the quality, performance characteristics, supply, delivery, installation, and training on use of the Goods.
- 4.2 Where applicable, the Supplier represents and warrants that at all times during the Contract term its answers to the due diligence questionnaire remain true and accurate.
- 4.3 The Supplier shall at all times comply with Good Industry Practice in the performance of the Contract.

4.4 The Supplier shall comply with the Customer's reasonable instructions whilst on Customer premises.

5. SUPPLY OF GOODS

5.1 The Supplier warrants that the Goods shall:

5.1.1 correspond with their description, any applicable Goods Specification, and the Purchase Order;

5.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;

5.1.3 be new (unless otherwise specified in the Goods Specification);

5.1.4 where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 18 months after delivery (or any longer warranty period usually offered by the Supplier) (such defects may arise, for example, from the Supplier's faulty design, the Supplier's erroneous instructions as to the use, inadequate or faulty materials, or poor workmanship); and

5.1.5 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling, and delivery of the Goods; and

5.1.6 not contain asbestos (unless otherwise specified in the Goods Specification).

5.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

5.3 The Customer shall not be deemed to have accepted any Goods until the Customer has had a reasonable time to inspect them following delivery or, in respect of defects not apparent on such inspection, within a reasonable time after any latent defect in the Goods has become apparent.

5.4 The Customer may inspect and test the Goods before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

5.5 If following such inspection or testing the Customer considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 5.1, the

Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

5.6 The Customer may conduct further inspections and tests after the Supplier has carried out its remedial actions.

6. DELIVERY OF GOODS

6.1 The Supplier shall ensure that:

6.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

6.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

6.1.3 if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

6.2 The Supplier shall deliver the Goods:

6.2.1 on the Delivery Date;

6.2.2 at the Delivery Location; and

6.2.3 during Business Hours or as instructed by the Customer.

6.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

6.4 If the Goods or any part of them are not delivered by the times or time specified in the Contract, then the Customer may by written notice cancel any undelivered balance of the Goods. The Customer may also return for full credit and at the Supplier's expense any Goods that in the Customer's opinion cannot be utilised as a result of the cancellation.

6.5 If the Supplier delivers more or less than the quantity of Goods and the Customer accepts the Goods, the Supplier shall make a pro rata adjustment to the invoice.

6.6 Any rejected Goods shall be returnable at the Supplier's risk and expense.

6.7 The Supplier shall not deliver the Goods in instalments without the Customer's prior

written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 8.1.

6.8 Title and risk in the Goods shall pass to the Customer on completion of delivery.

6.9 The Supplier warrants that its representatives, including third party carriers engaged by it, shall not cause damage to the Customer's property when delivering or installing Goods and shall observe all health and safety rules, and any security requirements, in force on the Customer's premises.

7. SUPPLY OF SERVICES

7.1 The Supplier shall from the date set out in the Order and for the duration of the Contract supply the Services to the Customer in accordance with the terms of the Contract.

7.2 The Supplier shall meet any performance dates for the Services specified in the Order or that the Customer notifies to the Supplier and unless, otherwise agreed in writing by the Customer, time is of the essence in relation to any of those performance dates.

7.3 In providing the Services, the Supplier shall:

7.3.1 co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;

7.3.2 perform the Services with the best care, skill, and diligence in accordance with best practice in the Supplier's industry, profession, or trade;

7.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;

7.3.4 ensure that the Services will conform with all descriptions, standards and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the Customer expressly or impliedly makes known to the Supplier;

7.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

7.3.6 use the best quality goods, materials, standards, and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or

transferred to the Customer, will be free from defects in workmanship, installation, and design;

- 7.3.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- 7.3.8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- 7.3.9 hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose of or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- 7.3.10 not do or omit to do anything which may cause the Customer to lose any licence, authority, consent, or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services;
- 7.3.11 comply with any additional obligations as set out in the Service Specification.

8. CUSTOMER REMEDIES

- 8.1 If the Supplier fails to deliver the Goods by the applicable date or to perform the Services by the applicable date, the Customer shall, without limiting or affecting other rights or remedies available to it, have any one or more of the following rights and remedies:
 - 8.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 8.1.2 to refuse to accept any subsequent performance of the Services or delivery of the Goods which the Supplier attempts to make;
 - 8.1.3 to return for full credit and at the Supplier's risk and expense any Goods that in the Customer's opinion cannot be utilised as a result of the cancellation;
 - 8.1.4 to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods or services from a third party;
 - 8.1.5 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided or Goods that it has not delivered; and
 - 8.1.6 to claim damages for any additional costs, loss or expenses incurred by the Customer

which are in any way attributable to the Supplier's failure to meet such dates (including costs of transport and storage of Goods which have been delivered late or to the wrong location).

8.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 5.1, then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:

8.2.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

8.2.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

8.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

8.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

8.2.5 to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and

8.2.6 to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with clause 5.1.

8.3 If the Supplier has supplied Services that do not comply with the requirements of clause 7.3.4 then, without limiting or affecting other rights or remedies available to it, the Customer shall have one or more of the following rights and remedies:

8.3.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

8.3.2 to return the Deliverables to the Supplier at the Supplier's own risk and expense;

8.3.3 to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services;

8.3.4 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

8.3.5 to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute services or deliverables from a third party; and

8.3.6 to claim damages for any additional costs, loss or expenses incurred by the Customer

arising from the Supplier's failure to comply with clause 7.3.4.

8.4 These Conditions shall extend to any substituted or remedial services or repaired, or replacement goods supplied by the Supplier.

8.5 The Customer's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

9. CUSTOMER'S OBLIGATIONS

9.1 The Customer shall:

9.1.1 provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and

9.1.2 provide such necessary information for the provision of the Services as the Supplier may reasonably request and the Customer considers reasonably necessary for the purpose of providing the Services.

9.2 A failure by the Customer to comply with the terms of the Contract can only relieve the Supplier from complying with its obligations under the Contract with effect from the date on which the Supplier notifies the Customer in writing and in reasonable detail of the Customer's failure and its effect or anticipated effect.

10. CHARGES AND PAYMENT

10.1 The price for the Goods:

10.1.1 shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and

10.1.2 shall be inclusive of the costs of packaging, insurance, and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Customer.

10.2 The charges for the Services shall be set out in the Order and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

10.3 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.

10.4 In respect of the Goods, the Supplier shall invoice the Customer on or at any time

after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including the relevant purchase order number.

- 10.5 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall pay the invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 10.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods or Services or both, as applicable, at the same time as payment is due for the supply of the Goods or Services.
- 10.7 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each date at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved on sums found or agreed to be due.
- 10.8 The Supplier is not entitled to suspend delivery of the Goods or performance of the Services solely due to payment being late.
- 10.9 The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Customer Materials) shall be owned by the Supplier.
- 11.2 The Supplier grants to the Customer or shall procure the direct grant to the Customer

of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Customer Materials) for the purpose of receiving and using the Services and the Deliverables.

- 11.3 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
- 11.4 The Supplier acknowledges that all rights in the Customer Materials are and shall remain the exclusive property of the Customer.

12. INDEMNITIES

- 12.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with:
 - 12.1.1 any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Customer Materials);
 - 12.1.2 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables, to the extent that the defects in the Goods or Deliverables are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - 12.1.3 any claim made against the Customer by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors;
 - 12.1.4 any breach or alleged breach by the Supplier of its obligations under clause 15 (Data Protection);
 - 12.1.5 breach of any warranty in the Contract;
 - 12.1.6 any negligent acts or omissions of the Supplier and its subcontractors.
- 12.2 This clause 12 shall survive termination of the Contract.

13. INSURANCE

During the term of the Contract and for a period of 12 years afterwards, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall produce to the Customer on demand both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

14. COMPLIANCE WITH RELEVANT LAWS AND POLICIES

14.1 In performing its obligations under the Contract, the Supplier warrants that it shall:

14.1.1 comply with all applicable laws, statutes, regulations, and codes from time to time in force; and

14.1.2 comply with the Customer's Supplier Code of Conduct which is available at [WEB ADDRESS].

14.2 The Supplier shall notify the Customer as soon as it becomes aware of any breach, or potential breach, of clause 14.1.

15. DATA PROTECTION

15.1 A data protection agreement (such as a data processing agreement or data sharing agreement) signed by the parties shall take precedence over this clause 15 to the extent that there is a conflict between such an agreement and this clause.

15.2 The following definitions apply in this clause 15:

15.2.1 The terms **Commissioner, controller, data subject, personal data, personal data breach, processor, and processing**, shall have the meaning given to them in the UK GDPR, and **supervisory authority** shall have the meaning given to it in the EU GDPR.

15.2.2 **Applicable Data Protection Laws:** To the extent UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data. To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.

15.2.3 **UK GDPR** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

15.2.4 **EU GDPR** means the General Data Protection Regulation ((EU) 2016/679), as it has

effect in EU law.

- 15.2.5 **Customer Personal Data** means any personal data which the Supplier processes in connection with this agreement, in the capacity of a processor on behalf of the Customer.
- 15.2.6 **Supplier Personal Data** means any personal data which the Supplier processes in connection with the Contract, in the capacity of a controller.
- 15.3 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause **15Error! Reference source not found.** is in addition to, and does not relieve, remove, or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 15.4 The parties have determined that, for the purposes of Applicable Data Protection Laws, the Customer is the controller, and the Supplier is the processor, unless the parties agree otherwise in writing.
- 15.5 This clause 15.5 applies where the Supplier acts as controller pursuant to an agreement as referred to in clause 15.4.
- 15.5.1 Without prejudice to clause 15.3, the Supplier:
- (a) shall process all Supplier Personal Data strictly in accordance with its privacy policy, a copy of which it shall promptly supply to the Customer (**Supplier Privacy Policy**);
 - (b) shall not amend the Supplier Privacy Policy without the Customer's prior written consent;
 - (c) shall promptly comply with all reasonable instructions of the Customer in connection with the Supplier Privacy Policy, and any amendments, shall promptly provide copies of the same to the Customer on request in a commonly available electronic format, and hereby consents to the Customer making the Supplier Privacy Policy available to any applicable data subjects;
 - (d) undertakes, warrants, and represents that the Supplier Privacy Policy, and any amendments, will at all times comply with Applicable Data Protection Laws and that it will not make any amendments to the Supplier Privacy Policy where this would be in contravention of Applicable Data Protection Laws;
 - (e) , as between the parties, is solely responsible for ensuring that the processing of Supplier Personal Data complies with Applicable Laws, including Applicable Data Protection Laws, and in particular, that all required fair processing

information is provided to the relevant data subjects; and

- (f) promptly comply with any reasonable instructions received from the Customer to display or otherwise make available the Customer's then-current version of its privacy policy via the goods or services provided by the Supplier. Such instructions may include implementing a reasonable process to certify that the data subject has acknowledged its terms.

15.5.2 If there are any inconsistencies or conflict between the terms of the Supplier Privacy Policy and this Contract, this Contract shall take precedence.

15.6 In relation to the Customer Personal Data, the parties shall agree the scope, nature, and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.

15.7 Without prejudice to clause 15.3, the Supplier shall, in relation to Customer Personal Data:

15.7.1 process that Customer Personal Data only on the documented instructions of the Customer unless Applicable Laws require the Supplier to otherwise process that Customer Personal Data. Where the Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. The Supplier shall immediately inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Laws;

15.7.2 implement appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Customer Personal Data and against its accidental loss, damage, or destruction, including inter alia as appropriate:

- (a) the pseudonymisation and encryption of Customer Personal Data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to Customer Personal Data in a timely manner in the event of a physical or technical incident; and
- (d) a process for regularly testing, assessing, and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

In assessing the appropriate level of security, the Supplier shall take into account in particular of the risks that are presented by the processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Customer Personal Data transmitted, stored or otherwise processed.

- 15.7.3 ensure, and procure that that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- 15.7.4 promptly assist the Customer, at the Supplier's expense, in responding to any request from a data subject and in ensuring compliance with the Customer's obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with the Commissioner, supervisory authorities or other regulators and, in particular, the Supplier shall promptly notify the Customer if it receives any complaint, notice or communication (whether from the Commissioner, any data subject, supervisory authority or other third party) which relates to processing of Customer Personal Data;
- 15.7.5 notify the Customer without undue delay (and no later than 24 hours) after becoming aware of a personal data breach and on suspecting the same, the Supplier shall promptly conduct an initial assessment to determine, with a reasonable degree of certainty, whether the event or incident qualifies for notification to the Customer under this clause 15.7.5 and shall provide a copy of this initial assessment along with such notification;
- 15.7.6 at the written direction of the Customer, delete or return to the Customer all Customer Personal Data on termination or expiry of the Contract, and certify to the Customer in writing it has done so, unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data, in which case the Supplier shall promptly notify the Customer, in writing, of what that Applicable Law is and shall only be permitted to process that Customer Personal Data for the specific purpose so-notified, and all other requirements set out in this clause **Error! Reference source not found.** shall continue to apply to such Customer Personal Data notwithstanding the termination or expiry of this Contract for as long as such Customer Personal Data is processed by the Supplier. For the purposes of this clause 1.8(f) the obligation to "delete" data includes the obligation to delete data from back-up systems as well as live systems; and
- 15.7.7 maintain adequate records, and, on the Customer's request, make available such information as the Customer may reasonably request, and allow for and submit its premises and operations to audits, including inspections, by the Customer or the

Customer's designated auditor, to demonstrate its compliance with Applicable Data Protection Laws and this clause 15 **Error! Reference source not found.**

- 15.8 The Supplier shall not, without the prior written consent of the Customer (and in any event subject to the Supplier providing the Customer with reasonable evidence that such activity is being undertaken in full compliance with Applicable Data Protection Laws):
- 15.8.1 appoint or replace (or change the terms of the appointment of) any other processor in relation to Customer Personal Data or transfer any Customer Personal Data to the same; or
- 15.8.2 carry out, via itself or via any other processor, any processing of Customer Personal Data, or transfer any Customer Personal Data, outside of the UK, including processing Customer Personal Data on equipment situated outside of the UK.
- 15.9 Either party may, at any time on not less than 30 days' notice, revise clause 14 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).
- 15.10 The Supplier shall indemnify and keep the Customer indemnified from and against any and all costs, damages and expenses of any kind arising from any claim or demand brought by any person, data subject, Commissioner or supervisory authority as a result of any breach or alleged breach by Supplier of any Applicable Data Protection Law or its obligations under this clause 15.

16. TERMINATION

- 16.1 The Customer may cancel the Purchase Order (in whole or in part) prior to the delivery of the Goods or the start of performance of the Services. In this event, the Customer's sole liability shall be to pay the Price of the cancelled Goods/Services less the Supplier's savings resulting from the cancellation.
- 16.2 Unless the Supplier submits its claim for cancellation compensation as described in clause 16.1 within 3 months of the date of the Customer's cancellation, it shall have waived its right to any compensation.
- 16.3 Without affecting any other right or remedy available to it, the Customer may terminate the Contract (in whole or in part):
- 16.3.1 with immediate effect by giving written notice to the Supplier if:
- (a) there is a change of control of the Supplier;

- (b) the Supplier commits a breach of clause 14.1; or
 - (c) the Customer reasonably believes that the circumstances set out in regulation 73(1) of the Public Contracts Regulations 2015 apply; or
- 16.3.2 for convenience by giving the Supplier 30 days' written notice (or such other notice period as is agreed in writing by both parties).
- 16.4 Without affecting any other right or remedy available to it, either party may terminate the Contract (in whole or in part) with immediate effect by giving written notice to the other party if:
- 16.4.1 the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
 - 16.4.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
 - 16.4.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

17. CONSEQUENCES OF TERMINATION

- 17.1 On termination of the Contract, the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 17.2 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 17.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

18. CONFIDENTIALITY

- 18.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 18.2.
- 18.2 Each party may disclose the other party's confidential information:
- 18.2.1 to its employees, officers, representatives, contractors, subcontractors, or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 18; and
- 18.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 18.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

19. FORCE MAJEURE

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for three weeks, the party not affected may terminate the Contract by giving 7 days' written notice to the affected party.

20. GENERAL

20.1 Assignment and other dealings.

- 20.1.1 The Customer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.
- 20.1.2 The Supplier shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Customer.

- 20.2 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Customer (which shall be deemed given if the Goods Specification or Service Specification names a subcontractor). If the Customer consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.
- 20.3 Any consent given by the Customer for the Supplier to subcontract any of its obligations shall not impose any duty on the Customer to enquire as to the competency of any authorised subcontractor. The Supplier shall ensure that any authorised subcontractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such subcontractor are fully in accordance with those obligations.
- 20.4 The Supplier shall provide a copy of any subcontract to the Contract within 5 Business Days of the Customer's written request but may redact any confidential pricing information.
- 20.5 Where the Customer pays the Supplier's invoices early in accordance with any applicable government prompt payment targets, the Supplier shall use its reasonable endeavours to pay its relevant subcontractors early accordingly.
- 20.6 **Notices.**
- 20.6.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be.
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 20.6.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
 - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the Business Day after posting.
- 20.6.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

- 20.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal, or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 20.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 20.8 **Waiver.**
- 20.8.1 Except as set out in clause 2.6 and clause 16.2, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 20.8.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 20.9 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 20.10 **Entire agreement.**
- 20.10.1 The Contract constitutes the entire agreement between the parties.
- 20.10.2 Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance, or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 20.11 **Third party rights.**
- 20.11.1 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 20.11.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 20.12 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised

representatives.

- 20.13 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 20.14 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.